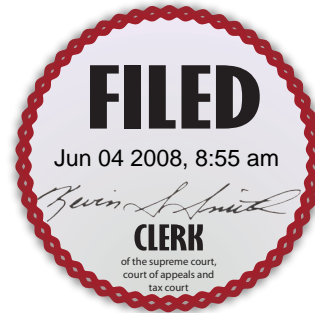


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF D.C., Minor Child, and)
JANNIE C., Mother,)

JANNIE C.,)
Appellant-Respondent,)

vs.)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee-Petitioner,)

CHILD ADVOCATES, INC.,)
Co-Appellee-Guardian ad Litem.)

No. 49A02-0711-JV-955

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Judge
Cause Nos. 49D09-0703-JT-010385 and 49D09-0605-JT-020287

June 4, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jannie C. (“Mother”) appeals the termination of her parental rights to her son, D.C., in Marion Superior Court, arguing that the Marion County Department of Child Services (“MCDCS”) presented insufficient evidence to support the termination. We affirm.

Facts and Procedural History

Mother has four children: C.T., born May 8, 1995; P.C., born September 28, 1999; J.B., born April 11, 2003; and D.C., born March 21, 2006. In 2001, C.T. and P.C. were found to be children in need of services (“CHINS”) and were removed from Mother’s care. In 2002, a petition to involuntarily terminate Mother’s parental rights to C.T. and P.C. was filed, and in 2004, Mother voluntarily terminated her parental rights to C.T. and P.C. when she signed consents for adoption. In 2004, J.B. was found to be a CHINS and removed from Mother’s care. Later that same year, Mother agreed to give J.B.’s father physical and legal custody of J.B., and the CHINS case for J.B. was closed.

Mother used marijuana and cocaine when she was pregnant with D.C., and she received prenatal care at a Wishard Hospital clinic for high-risk women with substance abuse. In May 2006, following D.C.’s birth, Mother returned to the Wishard clinic for a post-natal appointment and tested positive for marijuana and cocaine. Mother also did not take D.C. to all of his doctor visits. On May 16, 2006, MCDCS filed a petition

alleging that D.C. was a CHINS.¹ Mother entered an admission to the petition, and the trial court determined that D.C. was a CHINS. The trial court issued a parental participation decree and ordered Mother to, among other things, have supervised visitation with D.C. on a regular basis; keep weekly contact with the caseworker; complete a drug and alcohol assessment and follow all recommendations, including completion of an intensive outpatient program (“IOP”); submit to random drug screens; and complete a parenting assessment.

Mother initially complied with the requirement to visit D.C., but in November 2006, her visitation was temporarily suspended when she missed three consecutive visits. Between the beginning of the CHINS proceeding in May 2006 to December 2006, Mother’s contact with the caseworker was not consistent. Mother did not initially complete an IOP because she did not want to go when she had black eyes, which were the result of a domestic violence incident. In February 2007, Mother turned herself in on an open warrant for a probation violation from an invasion of privacy conviction and was thereafter incarcerated in Liberty Hall until April 2007.

On March 14, 2007, MCDCS filed a petition to terminate Mother’s parental rights to D.C. The trial court held termination hearings in September and October 2007. Thereafter, the trial court issued its findings of fact and conclusions of law terminating Mother’s parental rights. The trial court found in relevant part:

* * * * *

¹ The CHINS petition also alleged that J.B., who was staying with Mother at the time, was a CHINS. J.B. was later reunified with his father in November 2006, and the CHINS case for J.B. was dismissed.

3. Allegations within the [CHINS] Petition included Mother having an untreated substance abuse problem, having tested positive for marijuana, cocaine, and opiates throughout her pregnancy with [D.C.], as well as after his birth. Mother also has a history of [CHINS] and termination of parental rights cases with MCDCS.
4. Mother's oldest two children were the subject[s] of a CHINS proceeding in 200[1], which culminated into a termination of parent-child relationship case in 2002 as a result of Mother not completing services toward reunification. The termination case was dismissed upon Mother executing consents to adoption. An addition CHINS proceeding was filed on Mother's third child. That proceeding was dismissed after an agreed entry, giving custody to the child's father, was executed.
5. The allegations [in D.C.'s CHINS petition] were admitted by Mother on May 16, 2006 and [D.C.] was formally removed from her on that day pursuant to the CHINS Disposition Order.
6. Initial Services were ordered for Mother to complete toward reunification with [D.C.]. Services included a parenting assessment through Family Works, random urine screens through Valle Vista Health, and supervised visitation between [D.C.] and Mother at Giant Steps.
7. The service referrals for the parenting assessment and urine screens were closed as unsuccessful due to non-participation by Mother.
8. Upon Mother contacting the family case manager, additional referrals were made to Family Works for a parenting assessment in July of 2006 and August of 2006. Mother failed to participate in either assessment.
9. Visitation commenced in May of 2006 and occurred weekly, with a few exceptions. Mother was attentive to [D.C.] during visitation. However, as a result of Mother missing three consecutive weeks in November of 2006, visitation was suspended.
10. Mother was ordered to complete an intensive outpatient substance abuse program in 2006. Mother did not complete the program, explaining that she did not want to appear with bruises and black eyes obtained as the result of domestic violence.
11. Contact between Mother and the family case manager had been random up to November of 2006 at which time no contact was made until

mid-December after Mother failed to appear for a placement review hearing in the CHINS case.

12. Upon contact being re-established, a fourth referral was made for a parenting assessment through Family Works, a second referral was made for urine screens through Mosaic, and an inpatient drug treatment program referral was made to Harbor Light. These referrals were made on January 19, 2007.

13. Mother failed to participate in the screens at Mosaic. Mother's participation in Harbor Light inpatient program was contingent upon her obtaining a physician's clearance because of Mother's asthma. The Harbor Light referral was eventually closed after Mother failed to go to a proper physician.

14. The first part of a parenting assessment was completed for Mother by Jill English-Cheatham through Family Works. Part of the assessment involved an extensive interview with Mother on her history regarding childhood, relationships, education, employment, services, abuse, and coping and parenting skills.

15. Ms. English-Cheatham had concerns about Mother's substance abuse and recommended a residential treatment program based upon the fact that she had previously completed an outpatient program in 2001 or 2002, started using again, and failed to complete an outpatient program in 2006. Mother also admitted to Ms. English-Cheatham that her use of alcohol had been heavy for several years and she also abused marijuana mixed with cocaine. Mother noted she had last consumed alcohol the day of the assessment, and had used cocaine the prior weekend.

16. Mother did admit she had a substance abuse problem and needed assistance, requesting a residential program. Ms. English-Cheatham recommended the residential treatment program as a step toward Mother's reunification with [D.C.] concluding that substance abuse impairs the ability to parent because when intoxicated, a parent cannot think or function properly.

17. Mother's drug of choice is smoking marijuana laced with cocaine. She used drugs to make her forget her involvement with MCDCS and abusive relationships. Mother was drug free for eight to nine months in 2003 while residing at Midtown Community Mental Health Center's Project Home, but started using again thereafter.

18. Ms. English-Cheatham recommended that Mother receive individual counseling to address domestic violence and abuse issues. Mother had a tumultuous childhood and was subjected to abuse, both physical and sexual. Her mother was murdered when [Mother] was in her teens. Mother consistently made bad choices in selecting men for relationships. Mother explained she felt worthless and had no choice in the relationship or had no other place to go, so she would just “do it”. Mother reported that she had been physically abused the day before the assessment. Ms. English-Cheatham felt that individual counseling could help address the problem and help keep a child from being subjected to a violent environment.

19. Domestic violence was present in all the relationships with men that Mother spoke about, with one exception. The violence culminated in Mother going to the hospital on several occasions and having her nose broken. On occasions, at least one of her children was present.

20. The domestic violence also led Mother to stab two of her boyfriends. Mother has a history of altercations with her sister, resulting in police calls, and was evicted from the Project Hope home because of an altercation with another resident.

21. The bonding part of the parenting assessment was never completed. Prior to Ms. English-Cheatham being able to observe Mother with [D.C.], mother was incarcerated at Liberty Hall for two months for violating probation from an invasion of privacy conviction.

22. Upon Mother’s release from Liberty Hall in late April of 2007, the family case manager re-referred Mother for supervised visitation at Giant Steps. Visitation took place for one hour, one time a week. Since commencement of visitation on May 4, 2007, mother has attended all session with the exception of six cancellations, four by Mother and two by the foster parent.

23. Upon Mother’s release from Liberty Hall in late April of 2007, the family case manager re-referred Mother to inpatient treatment at Harbor Light. Again, in the absence of a physician’s consent to Mother attending with an asthma problem, the referral was cancelled.

24. Another referral for urine screens was made to Mosaic on May 18, 2007. The screens were given randomly on a weekly basis. Mother tested positive for THC on her first screen of May 29, 2007. She missed nine screen appointments and had seven negative screens. Mother requested bus passes for transportation to the screens, but not until the first week of

September. The screens at Mosaic were stopped shortly thereafter since Mother was also tested through her intensive outpatient program.

25. A referral to an intensive outpatient program was made on May 30, 2007 and Mother started attending an intensive outpatient treatment program with trauma on July 7, 2007. This was a twelve[-]week program, meeting three times a week, and included weekly screens. The trauma aspect was to help address domestic abuse issues. In addition, sixteen Alcoholics Anonymous “AA” or Narcotics Anonymous “NA” meetings were required.

26. During the initial twelve weeks of the outpatient treatment program, Mother made twenty-eight out of thirty[-]seven sessions. She called in ill except for one “no call, no show” on July 27, 2007. She tested negative on the urine screens given. However she missed weekly screens and had diluted samples, considered by the program to be a positive test, on July 2, 2007 and September 19, 2007.

27. Mother failed to appear at her outpatient treatment session of October 5, 2007, a time between the second and third day of testimony in this cause.

28. Mother did not attend AA or NA meetings until September of 2007, and had attended eight or nine by the second day of this trial.

29. According to Julie Lisek, the Family Services of Indiana therapist providing outpatient treatment, Mother could go into an aftercare program upon three more negative urine screens and having a total of ten AA or NA meetings. The aftercare program would last eight weeks with one therapy session per week. Random urine screens and the attendance of two AA or NA meetings per week would also be required.

30. Ms. Lisek also believed that individual counseling for domestic abuse would benefit Mother.

31. Mother has a history of accepting domestic abuse and acting out in violence. She has received numerous injuries resulting in hospital visits. She has also stabbed boyfriends, violated protective orders, and been in altercations with others. Individual counseling for domestic abuse and violence has been recommended, but Mother has not availed herself of this service. Mother’s response to what she learned in an anger management class, taken while incarcerated, was to “not get into a relationship”.

Mother's lack of insight into the problem of abusive relationships creates deep concerns for the safety of [D.C.] if placed back with Mother.

32. Mother has had adequate housing since March of 2007 but that alone does not ensure [D.C.]'s safety.

33. There is no indication that the original reason for [D.C.]'s removal has been remedied. The last true positive urine screen was taken on May 29, 2007, less than five months ago. Since May 29th, there have been missed screens and diluted screens. Although an aftercare program has been proposed, the fact remains that Mother missed several sessions of her outpatient program and started attending AA or NA meetings just within the last month.

34. Mother has an asthmatic condition on which she blames her inability to attend services regularly. She has produced one physician's excuse to Family Services. She is able to attend visitation sessions with [D.C.] while being too ill to attend her outpatient treatment sessions the same day. Mother failed to accept responsibility in her three eldest children's CHINS and termination cases, and she does not believe [D.C.] should have been removed from her care.

35. In light of Mother's history of failing to complete and follow through on services, from her eldest children's Children in Need of Services case in 2001, to her recently missed screens and treatment sessions, there is a reasonable probability that the conditions resulting in [D.C.] being placed outside Mother's home will not be remedied.

36. [D.C.] has been placed outside of Mother's home for sixteen months. He is just over eighteen months old. He has resided with one foster mother during these proceedings. This is a pre-adoptive home where [D.C.] has become very bonded with his stepmother [sic].

37. To provide Mother with more time to try to successfully complete services would deny [D.C.] permanency and stability in the safe, loving environment in which he has lived almost his whole life.

38. [D.C.]'s Guardian ad Litem feels it is in the best interests of [D.C.] that Mother's parental rights be terminated and [D.C.] be adopted by his foster mother.

Appellant's App. pp. 135-39. The trial court concluded, among other things, that there was a reasonable probability that the conditions that resulted in D.C.'s removal and placement outside the home would not be remedied and that it was in D.C.'s best interests to terminate the parent-child relationship. Mother now appeals. Additional facts will be provided as necessary.

Discussion and Decision

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). "A parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" Id. (quoting Troxel v. Granville, 530 U.S. 57, 65 (2000)). However, parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. "Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities." Id.

When we review the termination of parental rights, we do not reweigh the evidence or judge witness credibility and we may consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. In addition, when reviewing findings of fact and conclusions of law entered in termination cases, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. We will set aside the trial court's judgment only if it is clearly erroneous. Id. If the evidence

supports the trial court's decision, we must affirm. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied.

To effect the involuntary termination of a parent-child relationship, the MCDCS must establish that:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
* * * * *
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. Bester, 839 N.E.2d at 148; Egly v. Blackford County Dep't. of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother challenges the trial court's findings relating to its conclusions that MCDCS had met its burden of proving subsections (B) and (C). Specifically, Mother argues that the trial court erred by determining that (1) there was a reasonable probability that the conditions that resulted in D.C.'s removal from Mother's home would not be remedied; and (2) the termination was in D.C.'s best interests. We will address each argument separately.

I. Conditions Not Remedied

Mother asserts that the termination of her parental rights was erroneous because MCDCS failed to prove that there was a reasonable probability that the conditions that resulted in D.C.'s removal or the reasons for placement outside the home will not be remedied. To determine whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. In re A.N.J., 690 N.E.2d 716, 721 (Ind. Ct. App. 1997), trans. denied. The trial court must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. Id. A trial court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Additionally, the trial court can properly consider the services offered by DCS to the parent and the parent's response to those services as evidence of whether conditions will be remedied. Id.

Mother disputes the trial court's determination that the conditions will not be remedied by challenging a host of the trial court's findings as irrelevant, misleading, or not supported by the evidence.² For example, Mother contends that the trial court's

² Mother challenges findings 3, 4, 6-9, 11-13, 16, 19, 20, 23, 24, 27-29, 31, 37, and 38.

findings 3 and 4 regarding the reasons for D.C.'s removal and her prior history of CHINS cases are not relevant. As noted above, the subject of these findings are certainly relevant to a trial court's determination of whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied. See McBride, 798 N.E.2d at 199; In re A.N.J., 690 N.E.2d at 721. Thus, we cannot conclude that these findings are irrelevant.

Mother also challenges findings 6, 7, and 8—which explain the services Mother was required to complete and how she initially failed to do so. Mother suggests that these findings are “misleading because they discuss the problems with [Mother] completing services back when she believed open adoption or custody to the father could maintain a relationship with DC and remove DCS from her private life.” Appellant's Br. p. 11. We fail to see how these findings, which are supported by the evidence, are misleading to a determination of whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied.

Mother also challenges some of the findings that address the domestic abuse in her life. Finding 19 discusses the history of domestic violence in Mother's relationships with her boyfriends, and it states that “[o]n occasions, at least one of her children was present.” Appellant's App. p. 137. In challenging finding 19 as not supported by the evidence, Mother suggests that this finding states that one of her children “witnessed” the abuse. Appellant's Br. p. 12. First, this finding does not mention that Mother's children witnessed the abuse. Furthermore, the evidence supports the trial court's finding that

Mother had children at the time she was involved in her various abusive relationships. Mother testified that when D.C. was born she was in an abusive relationship with a man who would jump on her any time of the day and who had given her black eyes and a broken nose. See Tr. pp. 226, 237-39. Mother also testified about other relationships she had involving episodes of domestic violence, and she indicated that she had children when she was involved in these relationships. See id. at 241-41.

We also reject Mother's challenge to finding 20, which discusses Mother's tendency to be violent to others and states that she was "evicted from the Project Hope home because of an altercation with another resident." Appellant's App. p. 137. Mother does not challenge that she was evicted from the Project Hope home but contends that this finding is erroneous because "the evidence was that it was an argument with staff" and not a resident. Appellant's Br. p. 12. However, when Mother testified about the incident at Project Home, she stated that she "got into it with one of the staff members and a female that was living there" Tr. p. 257. Thus, we find Mother's challenge to finding 20 to be without merit.

Mother disputes the trial court's findings 13 and 23, which concern her failure to complete the inpatient program at Harbor Lights after she failed to get documentation from her doctor regarding her asthma. Mother contends that these findings are improper or misleading because her asthma was not under control and because MCDCS should not have referred her to Harbor Lights inpatient program if her medical condition would preclude her from attending. The trial court heard testimony from Mother that she did not have a family physician, was treated for her asthma by emergency room doctors, and

did not ask a doctor for documentation regarding her asthma because she did not believe it was under control. Testimony was also presented from service providers that Mother had an asthma attack while attending an IOP session; that she missed almost three weeks of sessions thereafter but was, nevertheless, able to attend visitation sessions with D.C. at that same time; that she was able to provide documentation regarding her asthma to return to IOP at Family Services; and that she was not willing to try to get a doctor's note so that she could attend the inpatient program at Harbor Lights. The trial court heard this evidence, acknowledged that Mother had an asthmatic condition, but determined that she was using it to divert blame for her failure to regularly attend services. See Appellant's App. p. 139, finding 34. Mother's challenge to findings 13 and 23 amount to a request to reweigh the evidence, which we will not do.

Mother also challenges findings 27, 28, and 29, which discuss Mother's missed IOP session around the time of the termination hearing and the basic requirements to enter an aftercare program. Mother does not challenge the fact that she missed an IOP session or the requirements but offers reasons why she did not attend the session. Again, Mother's argument is nothing more than a request to reweigh the evidence, which we will not do.

Mother also challenges the trial court's finding 31, which it suggests that she has a history of "accepting" domestic violence in her life and has "not availed herself" of individual counseling that had been recommended. See id. at 138-39. There is certainly evidence in the record to support the fact that Mother's history is marked with numerous incidents of domestic violence in which she received various injuries and went to the

hospital and where she inflicted injury on some of her boyfriends by stabbing them; however, we agree that trial court's word choice of "accepting" domestic violence was perhaps not the most prudent.

In regard finding 31's reference to individual counseling, the evidence in the record indicates that the trial court is correct that individual counseling was recommended, but it is incorrect that Mother failed to attend individual counseling. The parenting assessor, upon Mother disclosing information about her history during the parenting assessment, recommended that Mother get individual counseling. MCDACS, however, acknowledges that it did not refer Mother to individual counseling. Therefore, the trial court's reference to Mother failing to attend individual counseling is erroneous.

Despite this error, the trial court's findings are otherwise supported by the evidence, and the findings support the trial court's conclusion that there was a reasonable probability that the conditions that resulted in D.C.'s removal or the reasons for placement outside the home will not be remedied. Here, D.C. was initially removed from Mother's care in May 2006 after Mother, who used marijuana and cocaine during her pregnancy, had a positive drug screen for marijuana and cocaine at her six-week post-natal checkup. Mother initially failed to comply with some court-ordered services and continued to use drugs for a few months after D.C. was removed from her care. Following Mother's release from incarceration on a probation violation in April 2007, Mother started to attend an IOP and drug testing. Mother, however, had a positive drug screen in May 2007, had diluted screens in July 2007 and September 2007, and missed various appointments for drug screens. Mother attended IOP sessions but also missed

some of these sessions even on the days that she was able to attend supervised visitation with D.C. Furthermore, Mother has a history of CHINS proceedings with her three older children, which resulted in a voluntary termination of the two older children and consent to give custody of the third child to the father. During the course of one of these prior CHINS proceedings, Mother completed an IOP program and was clean for eight or nine months but then went back to using drugs again. Mother testified that she was not responsible for her prior children being removed from her care in the prior CHINS cases and that she did not understand why D.C. was removed from her care. For all these reasons, we cannot say that the trial court clearly erred by determination that there was a reasonable probability that the conditions that resulted in D.C.'s removal or the reasons for placement outside the home will not be remedied.

II. Best Interests

Mother also argues that there was insufficient evidence to show that termination of the parent-child relationship was in the best interests of the child. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. In re D.D., 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. Id. Testimony of the DCS caseworker and the guardian ad litem has been found to be sufficient to support the trial court's conclusion that termination was in the best interests of the child. See McBride, 798 N.E.2d at 203; In re T.F., 743 N.E.2d at 776.

Here, the totality of the evidence demonstrated that the termination of Mother's parental rights was in D.C.'s best interests. The evidence most favorable to the judgment showed that Mother has a history of substance abuse and domestic violence and has been involved in prior CHINS cases with her other children. Mother used drugs while she was pregnant with D.C., after she had given birth to D.C., after D.C. was removed from her care, and even after she had completed a term of incarceration on her probation violation. Although Mother was participating in court-ordered services at the time of the hearing, the record reveals that she had not fully complied with the services and that she appears to lack the insight into her responsibility for the initiation of these proceedings. The record also reveals that D.C.—who had been removed from Mother's care when he was two months old and was approximately eighteen months old at the time of the termination hearings—had been placed in one foster home since his removal, that he was doing well in this placement and was very attached to the foster mother, and that this foster mother wanted to adopt him. Furthermore, the MCDCS caseworker testified that it was in D.C.'s best interests to remain in the foster mother's care, and the guardian ad litem testified that termination of Mother's parental rights was in D.C.'s best interests. See Tr. pp. 351, 420. Based on the record before us, sufficient evidence existed to support the trial court's finding that termination of Mother's parental rights was in D.C.'s best interests.

For all of these reasons, we conclude that the evidence supports the trial court's findings that the conditions that led to the removal of D.C. will not be remedied and that termination of Mother's parental rights is in D.C.'s best interests. Mother's request that we determine otherwise is an invitation to reweigh the evidence, which we will not do.

Affirmed.

MAY, J., and VAIDIK, J., concur.